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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

CLAUDY PHILIDOR,

Defendant and Appellant.

F059003

(Super. Ct. No. F09901539)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Mark Wood Snauffer, Judge.

Barbara J. Coffman, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Wiseman Acting P.J., Levy, J., and Hill, J.

STATEMENT OF THE CASE

On March 12, 2009, appellant, Claudy Philidor, was charged in a criminal complaint with robbery (Pen. Code, § 211, count one),¹ making criminal threats (§ 422, counts two & three), obstruction or delay of a peace officer (§ 148, subd. (a)(1), count four) and driving with a suspended or revoked driver's license (Veh. Code, § 14601.1, subd. (a), count five). Count one alleged a gun use enhancement pursuant to section 12022.53, subdivision (b) and count two alleged a gun use enhancement pursuant to section 12022.5, subdivision (a).²

On August 28, 2009, the parties entered into a plea agreement. In exchange for appellant's admission of counts one, two, and the section 12022.53, subdivision (b) gun use enhancement, the remaining allegations would be dismissed. Although the prosecutor proposed a sentencing lid of 15 years, the court indicated a lid sentence of 12 years. Appellant executed a felony advisement, waiver of rights, and plea form wherein he acknowledged the terms of the plea agreement, the consequences of his plea, and waived his constitutional rights pursuant to *Boykin/Tahl*.³

The court explained the consequences of appellant's plea, read appellant his constitutional rights pursuant to *Boykin/Tahl*, and appellant waived his constitutional rights. The parties stipulated to a factual basis for the plea. Appellant pled no contest to counts one and two, and admitted the section 12022.53, subdivision (b) gun use enhancement. The remaining allegations were dismissed.

On October 2, 2009, the court sentenced appellant to prison for two years on count one plus ten years for the gun use enhancement. The court sentenced appellant to a

¹ Unless otherwise indicated, all statutory references are to the Penal Code.

² Appellant's offenses allegedly occurred on February 28, 2009.

³ *Boykin v. Alabama* (1969) 395 U.S. 238; *In re Tahl* (1969) 1 Cal.3d 122 (*Boykin/Tahl*).

concurrent term of two years on count two. Appellant's total prison term is 12 years. The court imposed a restitution fine, an assessment fee of \$30 pursuant to Government Code section 70373, and granted applicable custody credits.⁴ The court further ordered substance abuse counseling and a mental health evaluation by the California Department of Corrections.

FACTS

At 2:40 p.m. on February 28, 2009, a bank teller at the Wells Fargo Bank branch on Friant Road was working with a customer when she saw appellant talking to another teller. Appellant was demanding the tellers open their drawers and place all of their money into a bag he was carrying. Appellant threatened to kill anyone who touched one of "those buttons." Appellant pointed the muzzle of a gun at the head of one of the tellers. Another witness heard appellant continually stating that the tellers had five seconds.

After receiving the money, appellant removed his mask as he fled the scene in a light colored Jeep. Officers were dispatched to the scene. On the way, they saw the suspect's vehicle in the parking lot of a Kohl's department store. Appellant fled from his vehicle with a bag and a handgun. Appellant discarded the bag while running down a freeway embankment. An officer confronted appellant and commanded him to stop. Appellant reached toward his waistband. The officer shot at appellant.

Appellant continued his flight, jumping over a chain link fence and running toward a Marriot hotel. Officers apprehended appellant at the hotel. Appellant had changed his clothing to conceal his appearance. Officers later recovered a semi-

⁴ Appellant's offense was committed in February 2009, after the operative date of Government Code section 70373. Because appellant's offense is a violent felony under section 667.5, subdivision (c)(9) and a serious felony under section 1192.7, subdivision (c)(19), he is not entitled to additional custody credits pursuant to the recently amended provisions of section 4019.

automatic nine-millimeter handgun and money, including bait money from the bank. The bank was missing \$45,687.00. Officers were able to recover \$40,168.54. During interrogation, appellant initially claimed he was forced to commit the robbery by others. Later he admitted that he committed the crime.

APPELLATE COURT REVIEW

Appellant's appointed appellate counsel has filed an opening brief that summarizes the pertinent facts, raises no issues, and requests this court to review the record independently. (*People v. Wende* (1979) 25 Cal.3d 436.) The opening brief also includes the declaration of appellate counsel indicating that appellant was advised he could file his own brief with this court. By letter on February 5, 2010, we invited appellant to submit additional briefing. To date, he has not done so.

After independent review of the record, we have concluded there are no reasonably arguable legal or factual issues.

DISPOSITION

The judgment is affirmed.